

SECTION E - ENVIRONMENTAL REVIEW

1. CHECKLIST

- _____ **Maintain a complete file. The Environmental Review is a public document.**
- _____ **Compliance is not discretionary - All grantees receiving HUD funds must comply.**
- _____ **Do not commit ANY funds or incur costs associated with your project until you have received an environmental release letter from the State.**
- _____ **Be aware that all legal responsibility for compliance is transferred to the grantee upon the signing of the CDBG contract.**

2. OVERVIEW

HUD ENVIRONMENTAL REVIEW REGULATIONS - (24 CFR PART 58)

The environmental review process required by the CDBG program is regulated by the Federal Code of Regulations at 24 CFR Part 58. Applicable HUD programs under this part include any program in **which specific statutory authority allows the environmental review responsibilities to be assumed by *RESPONSIBLE ENTITIES***. Those programs include: CDBG (including rental rehabilitation and self help homeownership), Section 8, Homeless Programs, Indian Housing, ESG and HOME projects.

The State operation of these programs stipulates that if you have received a HUD grant for one of these programs you will comply with **24 CFR PART 58** by completing the following **FOUR** steps:

1. Identify an Environmental Certifying Officer (ECO) for your jurisdiction. This person will be responsible for ensuring that the required environmental review is carried out. He/she will also complete the Request for Release of Funds, if necessary and will represent the entity in any court proceeding. This person is usually the chief elected official or another employee by Resolution.)
2. Complete the Description of Proposed Action (DPA) and appropriate checklist and submit to the state CDBG office for review.
3. Publish any required public notices and submit documentation to the State, if applicable.
4. Obtain a letter of Environmental Release for all activities associated with this grant.

There are **TWO groups of laws, policies and regulations** you must address to comply with 24 CFR Part 58:

and 1) **NEPA – National Environmental Policy Act of 1969** (40CFR Parts 1500-1508) This document is the National Charter that establishes national policy, goals and procedures for protecting, restoring and enhancing environmental quality.

2) **Related Federal Laws and Authorities** (24 CFR 58.5). These laws include:

1. HUD Environmental Criteria and Standards (24 CFR Part 51 (B)(C)(D)
Noise, Thermal and Explosive Hazards, and Airport Clear Zones
2. Toxic Chemicals and Radioactive Material – CERCLIS (HUD notice 79-33)
3. Historic properties
4. Floodplain management and wetland protection
5. Coastal area protection and management
6. Sole source aquifers
7. Endangered species
8. Wild and scenic rivers
9. Air quality
10. Farmland protection
11. Environmental Justice (Executive Order 12898.

STATE RESPONSIBILITIES - The State Office will:

- a. Develop monitoring and enforcement procedures of environmental reviews.
- b. Receive public notices, requests for release of funds and certifications, public comments, and the documents of related actions for the release of environmental grant conditions.

GRANTEE RESPONSIBILITIES – The Grantee will:

- a. **Designate an Environmental Certifying Officer (ECO)** who will accept the legal authority and responsibility for making the findings of level of impact and determine the appropriate environmental review category. The preferred ECO is the chief elected officer of the unit of general government in which the project is located. Other positions within the city/county may be designated, if preferred. The designation should be by title, i.e. Mayor, City Planner, etc. rather than the name of an individual. The designation of someone other than the chief elected official must be done by formal resolution at a city council or county commission meeting.

COMPLY BY: Providing a copy of a formal resolution that designates the position or name of the individual designated if other than the chief elected official. See Environmental Exhibit E-

- b. **Prepare an Environmental Review Record (ERR).** This is a written record of the environmental process. It must be available for public review. It will include all documentation related to environmental concerns.

COMPLY BY: Preparing a file that contains some or all of the following:

1. Designation of the Environmental Certifying Officer (ECO)
2. Description of Proposed Action (DPA) - required
3. Environmental Checklist – (CAT X or EA) with supporting documents – (memos, maps, correspondence or other resources)
4. Public notices, if required
5. Request for Release of Funds & Certification, if required
6. The **Environmental Release Letter** from the State - required

c. **Perform the necessary environmental review.**

COMPLY BY: Reading through the following sections of the Federal Register, Exhibit E-1.

- ♥ **58.34-EXEMPT – pg 9 (no checklist required)**
- ♥ **58.35 (a) -CATEGORICALLY EXCLUDED – pg 9**
- ♥ **58.35 (b) – CATEGORICALLY EXCLUDED – pg 10 (no checklist required)**
- ♥ **58.36 and 58.40 ENVIRONMENTAL ASSESSMENT – pg 10**

Select the subsection within the section that describes the type of project being proposed by the Grantee. Locate the appropriate checklist for that type of activity and then proceed to address each of the criteria in that checklist by following the instructions provided. Additional documentation and information will probably be required which MAY include making contacts with other federal or state agencies. **Most of the resources needed to complete the checklists are in this handbook.**

3. **PROJECT ENVIRONMENTAL CATEGORIES**

EXEMPT PROJECTS - 24 CFR 58.34

***MOST NON-PHYSICAL ACTIVITIES**

***DOES NOT HAVE TO COMPLY WITH NEPA OR RELATE FEDERAL LAWS AND AUTHORITIES
(NO CHECKLIST IS REQUIRED)**

√ studies, plans, administrative and management services;

√ public services that don't have an impact of the physical environment; √ engineering design, architectural design;

√ purchase of some types of equipment; technical assistance and training;

√ limited types of assistance for temporary or permanent improvements that do not alter environmental conditions,

√ payment of principal and interest on loans made or obligations guaranteed by HUD, any of the categorical exclusions listed in 58.35(a) provided that there are no circumstances which required compliance with any other Federal laws and authorities cited in 58.5;

CATEGORICALLY EXCLUDED – 24 CFR 58.35

***MINIMAL EFFECT ON THE ENVIRONMENT BASED ON SIZE, USE, CAPACITY, LOCATION**

***DOES NOT HAVE TO COMPLY WITH NEPA LAWS**

These categories are subject to 58.5 (Related Federal Laws & Authorities)

√ acquisition, construction, improvement, reconstruction, or rehabilitation of public facilities and improvements, **OTHER THAN BUILDINGS BUT ONLY IF UNDER CERTAIN CONDITIONS**;

√ removal of architectural material and barriers that restrict the mobility and accessibility of elderly and handicapped persons;

√ rehab of buildings and improvements **ONLY UNDER CERTAIN CONDITIONS, INCLUDING**

-Multi-family Residential Buildings

-Residential structures, including commercial, industrial and public buildings:

√ individual action on a one-to-four family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site;

√ acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use;

√ Combinations of the above activities.

CATEGORICALLY EXCLUDED – 24 CFR 58.35(b)

**These categories are not subject to 58.5 (Related Federal Laws and Authorities)
(NO CHECKLIST IS REQUIRED)**

√ tenant-based rental assistance;

√ supportive services including, but not limited to healthcare, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

√ operating costs including maintenance, security, operation, utilities, furnishing, equipment, supplies, staff training and recruitment and other incidental costs;

√ economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

√ activities to assist home ownership of existing “or new dwelling units not assisted with Federal funds” including closing costs and down payment assistance to home buyers, interest buy downs and similar activities that result in the transfer of title to a property;

√ Affordable housing redevelopment costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

ENVIRONMENTAL ASSESSMENTS – 24 CFR 58.36

***ALL PROJECTS THAT DON’T LOGICALLY FIT INTO ONE OF THE CATEGORIES
ABOVE**

4. ENVIRONMENTAL REQUIREMENTS FOR EACH PROJECT CATEGORY

EXEMPT (24 CFR 58.34)

(ALL ELEMENTS OF THE PROJECT MUST BE NON-PHYSICAL)

If you have determined that your project fits within the criteria of activities listed under EXEMPT activities:

You **DO NOT** have to address the NEPA requirements

You **DO NOT** have to address the other Federal laws and authorities

You **DO NOT** have to complete a checklist

but

You **DO** have to designate an **ECO** (Environmental Certifying Officer) - The Chief elected official
(or you may designate another individual by resolution - see Exhibit E-2)

You **DO** have to complete the Description of Proposed Action (DPA) (Exhibit E-3) making a determination of the project's category and forward that to the CDBG Office for review.

You must receive a letter of **Acknowledgement** from the State CDBG office before you commit or expend funds related to your project.

You must prepare an Environmental Review Record that includes:

The Resolution designating the ECO (if applicable)

A copy of the DPA,

The environmental acknowledgement letter from the State.

This completes the EXEMPT environmental review

CATEGORICALLY EXCLUDED (24 CFR 58.35(a))
(ALL OR PORTIONS OF THE PROJECT INVOLVE SOME PHYSICAL ACTIVITY)

If you have determined that your project fits within the criteria of activities listed under CATEGORICALLY EXCLUDED, PART a:

You **DO NOT** have to address the NEPA requirements

- 1) You **DO** have to designate an **ECO** (Environmental Certifying Officer) - The Chief elected official (or you may designate another individual by resolution - see Exhibit E-2)
- 2) You **DO** have to complete the **Description of Proposed Action (DPA)**, (Exhibit E-3) make a determination of the project's category and send it to the CDBG Office.
- 3) You **DO** have to address the other **Laws and Authorities** listed at 58.5 and which are itemized in Exhibit E-4. Send a copy of the completed checklist and supporting documents to the CDBG office.

If you **DO NOT “Trigger” any of the items on the checklist, determination of your project goes from Categorically Excluded to Exempt. (The “Initial Determination” on the DPA form remains “Categorically Excluded,)**

The Utah CDBG program requires that you receive a letter of **Acknowledgement** before you commit or expend any funds related to your project.

Prepare an Environmental Review Record that includes:

The resolution designating the ECO – (if applicable)

A copy of the DPA

The checklist (E-4) and all supporting documents used to complete it

The environmental acknowledgement letter from the State

This completes the Categorically Excluded to Exempt environmental review

*****If you “trigger” any of the checklist items and must, as a result, attenuate the impact, you are required to prepare a notice to the public, the Notice of Intent to Request Release of Funds (NOI-RROF, Exhibit E-6) and the Request for Release of Funds and Certification (RROF-CERT, Exhibit E-8) after the completion of the checklist.***

If any of the items on the checklist were triggered and need attenuation, the determination that you make at the end of the Checklist must remain **Categorically Excluded** and the ECO must address each of the impacted items on the checklist. **Send a copy of the DPA and checklist to the CDBG office before publishing any notice.**

You must publish a Notice of Intent to Request Release of Funds (NOI-RROF-Exhibit E-6) following the instructions provided. On the day following the “on or about” date inserted in the NOI-RROF publication, the ECO completes and submits the Request for Release of Funds and Certification (RROF-CERT), Exhibit E-8 to the State CDBG office following the instructions included with the form.

All grantees that publish a notice must complete Exhibit E-9 and send a copy to the CDBG office.

You must receive an environmental release letter from the State CDBG office giving you permission to commit or expend funds related to your project.

Prepare an Environmental Review Record (file) that includes:
The resolution designating the ECO – (if applicable)
A copy of the DPA
The completed Checklist E-4 and all necessary supporting documentation
Copy of the NOI-RROF publication and copy of the Certification (Exhibit E-8)
Copy of Exhibit E-9
The environmental release letter sent from the State.

This completes the Categorically Excluded environmental review

CATEGORICALLY EXCLUDED - (24 CFR 58.35(b))
ECONOMIC DEVELOPMENT ACTIVITIES, HOMEBUYER AND RENTAL ASSISTANCE, SHELTER OPERATIONS

If you have determined that your project fits within the criteria of activities listed under **CATEGORICALLY EXCLUDED 58.35(b), DOES NOT HAVE TO COMPLY WITH 58.5:**

You **DO NOT** have to address the NEPA requirements,
You **DO NOT** have to address the other Federal laws and authorities.

But . . .

You **DO** have to designate an **ECO** (Environmental Certifying Officer) - The Chief elected official
(or you may designate another individual by resolution - see Exhibit E-2)

You **DO** have to complete the **Description of Proposed Action (DPA)** (Exhibit E-3), make a determination of the project's category and send it to the CDBG Office.

You **DO NOT** have to complete an environmental checklist.

You must receive a letter of **Acknowledgement** from the State CDBG office before you commit or expend funds related to your project.

Prepare an Environmental Review Record (file) that includes:
The resolution designating the ECO – (if applicable)
A copy of the DPA,
The environmental acknowledgement letter from the State

**This completes the “Categorically Excluded, Does not Have to Comply with 58.5”
environmental review**

ENVIRONMENTAL ASSESSMENT – (24 CFR 58.36)
ALL OR PORTIONS OF PROJECT INVOLVE SIGNIFICANT PHYSICAL ACTIVITY

If you have determined that your project DOES NOT fit under any of the criteria of activities under Exempt or Categorically Excluded you must complete an **ENVIRONMENTAL ASSESSMENT**:

You **DO** have to designate an **ECO** (Environmental Certifying Officer) - The Chief elected official (or you may designate another individual by resolution - see Exhibit E-2)

The **ECO DOES** have to complete the Description of Proposed Action (DPA), (Exhibit E-3) and send it to the CDBG Office.

You **DO** have to address the NEPA requirements, and

You **DO** have to address the other Laws and Authorities listed at 58.5 and which are itemized in the Environmental Assessment checklist (Exhibit E-5.) Send a copy of the completed checklist and supporting documents to the CDBG office.

Whether or not any items are “Triggered” and must be attenuated, the determination made at the end of the Checklist remains Environmental Assessment.

You **DO** have to publish a Combined Notice “Finding of No Significant Impact & Notice of Intent to Request Release of Funds” (FONSI-NOI/RFOF) Exhibit E-7 following the instructions provided.

On the “on or about” date inserted in the FONSI-NOI/RROF publication, the ECO completes and submits the Request for Release of Funds and Certification (RROF-CERT, Exhibit E-8) to the State CDBG office You must receive a letter of Environmental Release from the CDBG office giving you permission to commit or expend funds related to your project.

All grantees that publish a notice must complete Exhibit E-9 and send a copy to the CDBG office

Prepare an Environmental Review Record that includes:

The resolution designating the ECO – (if applicable)

A copy of the DPA,

The Checklist E-5 and all supporting documents

The FONSI publication and a copy of the Certification

Copy of Exhibit E-9

The environmental release letter sent from the State.

This completes the ENVIRONMENTAL ASSESSMENT review

5. **DCD REMOVAL OF CONDITIONS ('Release' from the State to begin project)**

After the appropriate waiting period for comments has passed, Grantees are able to obligate or expend funds for project activities once they receive a "release letter from the State CDBG office. **DCD's removal of conditions DOES NOT CONSTITUTE AGREEMENT** with the findings and conclusions or, necessarily, endorsement of the process by which these were determined. DCD's action is required if a Grantee submits the appropriate certifications forms. DCD is therefore not liable for any damages that may result from improper environmental findings.

DCD will monitor Grantee records and assess the adequacy of the review procedures utilized by the Grantee.

If, as a result of this review, it is determined that the recipient has failed to properly comply with environmental requirements, DCD, may suspend the project and require a new environmental review.

So in review, remember . . .

1. Who has to do this environmental review thing?

EVERYONE - but some to a lesser degree because of the physical impact of the project.

EVERYONE must designate an Environmental Certifying Officer (E-2) and complete a Description of Proposed Action (E-3).

2. As soon as I get back to the office can I start spending money budgeted for this contract?

NO. The only activity that can begin before the contract is executed is the preparation of the environmental review. NO project expenses incurred prior to receiving an environmental release will be reimbursed.

3. What did you say the Environmental Certifying Officer (ECO) does?

The ECO is the designated individual who will sign off on all of the environmental documents, certifying that they have been done and, to the best of their knowledge, appropriately and completely. This person **must** be a mayor or county commission chairperson OR a city or county employee that is designated by resolution to act on their behalf.

4. So who completes the Environmental Review Record?

The ECO may ask for the assistance of any number of individuals to help in the preparation of the review: an engineer, a building inspector, a planner, soils scientist – it all depends on the magnitude of the project.

THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY